IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3376 of 2000
with
Civil Application No.6249 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEIRS & LEGAL REPRESENTATIVE OF DHIRAJLAL BALUBHAI

Versus

STATE OF GUJARAT

Appearance:
MRS KETTY A MEHTA for Petitioner Nos. 1-4
Ms.Sonal D.Vyas, Assistant GOVERNMENT PLEADER,
for Respondent No. 1
MR AJ SHASTRI for Respondent No. 2-7

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 10/10/2002

ORAL JUDGEMENT

1. The petitioners have challenged the order passed

by the Secretary (Appeals), Revenue Department, Gujarat State, dated 24th March, 2000, which is at Annexure 'G' to the petition. Certain revenue entries were mutated in the revenue record, which were confirmed by the Collector in Appeal, and the revisional authority, in revision application, further confirmed the said entries. The said order of the Secretary is attacked by the petitioners on the ground that before the Secretary, the respondent had relied upon certain additional material for which no opportunity was given to the petitioners and the order in question is, therefore, required to be set aside and the matter is required to be remanded to the Secretary so that the petitioners can have their say on the basis of the aforesaid material. It is also submitted by the petitioners that, even otherwise also, the order in question is bad, because, according to the petitioners, the entry in favour of the respondents 2 to 7 is recorded in the revenue records on the basis of the Will of the deceased land owner and, according to the petitioners, the said Will is disputed because of the fact that the said Will cannot be said to be a genuine Will, as the same was bogus and concocted and was not registered.

2. This Court, while admitting the matter, has also passed an order of interim relief directing that status quo may be maintained by the parties regarding the land in question.

3. The present petition is opposed on behalf of respondents 2 to 7 by Mr.Shastri on the ground that the Will in question is genuine and rightly, the revenue entries were mutated in favour of his clients. He submitted that RTS proceedings are not the proceedings regarding title and, therefore, this Court may not interfere with the finding recorded by the authorities below. He also further submitted that the respondents 2 to 7 had not produced any additional material, but the said material was already available on the record and that additional material was merely in the nature of some written submissions.

4. At the time of hearing of this petition, Mrs. Mehta, learned Advocate, submitted that, subsequently, the present petitioners have already filed a civil suit and the trial court has already granted an order of status quo below Exhibit 5 in the said suit. It is, therefore, submitted that the entry in question may be deleted.

5. After hearing the parties, I am of the opinion

that so far as revenue entry is concerned, it is merely for fiscal purpose and by such entry, no right is created in favour or against any of the parties. The question of validity of Will etc. is required to be decided by the Civil Court and the revenue authority, while deciding the RTS proceedings, is not the competent authority to decide the question about the validity of the Will. In the instant case, the petitioners have already approached the Civil Court and the matter is sub judice before the Civil Court. Under the circumstances, the observations made by the revenue authorities at the time of recording revenue entry or the observation of the Collector or Secretary in the impugned orders may not have any effect so far as the pending civil suit is concerned and the civil suit is required to be decided by the civil court on its own and as per the evidence that may be available at the time of deciding the suit. The disputed entry, being entry No.1198, shall be subject to the final outcome of the civil suit between the parties. It is also clarified that the aforesaid revenue entry will have no bearing so far as the civil suit is concerned as RTS entry is merely for fiscal purpose.

Mr.Shastri for the respondents 2 to 7 pointed out that during the pendency of this Special Civil Application, the Deputy Collector has already effected change in the revenue record by posting new entry, being entry No.2286, which entry is also confirmed in the appeal, by the Collector, and his client is likely to prefer revision before the Special Secretary challenging the said order. In my view, this Court is not required to decide the aforesaid issue in the present Special Civil Application, as it is beyond the scope of the present proceedings. As and when any revision is preferred, it is for the Secretary to decide the same in accordance with law on merits and after hearing both the sides and the Secretary may dispose of the said revision without being influenced by the present order passed by this Court in the Special Civil Application; however, subject to considering the fact that the proceedings are already pending before the Civil Court.

6. This Special Civil Application is accordingly disposed of on the aforesaid lines. Rule is discharged with no order as to costs.

In view of the order in the Special Civil Application, no order in Civil Application No.6249 of 2002.

10th October, 2002 (P.B. Majmudar, J.)

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(apj)